

CAJ's submission no. S388

**CAJ's submission to the
Housing Associations on their consultations on
their draft Equality Schemes**

June 2012

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The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its obligations in international human rights law. CAJ is co-convenor of the Equality Coalition. We welcome the opportunity to comment on the Housing Associations' consultations on their draft equality schemes.

Although CAJ does not currently have the resources to comment on the detail of each Housing Association's equality scheme, audit of inequalities and action plan, we will set out four general principles that we recommend should be followed when producing equality schemes for the Housing Associations. CAJ had the opportunity to engage with several Housing Associations at an Equality Coalition event in June 2012, which was very useful. For those Housing Associations with which CAJ met,¹ this submission serves as written confirmation of the points raised on that occasion.

First, CAJ is encouraged that most Housing Associations have adopted the ECNI model scheme as a basis for their draft equality schemes, and expanded on it in parts. Although we appreciate the need to adapt the model scheme to each Housing Association's specific needs and internal procedures, we recommend that all of the substantive contents of the model scheme be included in each Housing Association's equality scheme. The model scheme represents a minimum threshold of best practice to ensure that s75 Northern Ireland Act 1998 ('s75') is applied effectively. Also, it would greatly facilitate engagement with civil society if each designated public authority has similar procedures in place under s75.

¹ At the Equality Coalition event on 13 June 2012, CAJ met with representatives of the following Housing Associations: Ark, Clanmil, Co-ownership, Harmony Homes, Helm Housing, Oaklee Homes Group, Open Door, Rural, Triangle, Ulidia and Wesley; and the Northern Ireland Federation of Housing Associations, which took comments on behalf of other Housing Associations.

Secondly, beyond the model scheme, it would be helpful for consultees to be informed when screening forms are posted on the Housing Associations' websites. We are concerned that, if screening reports are sent to consultees on a quarterly or annual basis, it is possible that civil society may not be aware of a specific policy's screening for a long period of time. After three months or a year, the policy may be implemented or further developed, so that alternative measures would be more difficult to apply. It would therefore be important for civil society to be informed sooner of policies for which 'no' or 'minor' impact was found, but for which they may have specialist knowledge of otherwise unforeseen equality impacts.

We appreciate that some Housing Associations will make the screening forms available on their websites and on request (para 4.13 ECNI model scheme). However, given that there are over 200 designated public authorities in Northern Ireland, it is impossible to review each of those websites daily, or even weekly, to check if screening forms have been posted. We would therefore recommend that the Housing Associations include a statement that consultees will be informed of screening forms when they are completed or posted on its website.

Thirdly, we acknowledge that, through Northern Ireland Federation of Housing Associationd ('NIFHA'), the Housing Associations have published and consulted upon their audits of inequalities. This is welcomed, as it helps civil society inform the Housing Associations of any irregularities or omissions, and also provide a useful frame of reference for the draft action plan. In addition, we recommend that all the Housing Associations continue to commit to publish and consult on their audits of inequalities in the future, by explicitly adding the audit as a document for which the Housing Associations will seek input from their stakeholders and consult upon (see para 2.15 ECNI model scheme).

Although CAJ has not been able to review the Housing Associations' audit of inequalities and action plan in detail, we note that all Housing Associations have released the same audit of inequalities and action plan through NIFHA. Although we appreciate the resource efficiency of this approach, we are also aware that each Housing Association operates in a slightly different geographic and demographic remit. As a result, we would recommend that each Housing Association consider carefully the specific inequalities suffered by its clients and others within its sphere of influence and, if necessary, add in

tailored action measures for those areas in which it can have a positive impact. We understand that this approach is already being undertaken by some Housing Associations.

We would like to remind the Housing Associations that, in addition to the s75 action-based plan, s75 continues to apply to all the Housing Associations' policies in relation to all nine equality groups. Although we recognise the positive impacts that the action-based plan could have on addressing inequalities, we are also aware that it could have a limiting influence on the operation of s75 outside the specific priorities identified within it. Also, newly emerging inequalities may not be captured in the original audit of inequalities. We therefore hope that any data gaps identified in the audit of inequalities will be addressed, and that the audit will provide a useful tool for policy-makers when applying s75 beyond the scope of the action plan.

Finally, CAJ recommends that the Housing Associations include statements in their equality schemes to explain the operation of s75, which is often misunderstood. In particular, we recommend that the Housing Associations' equality schemes include an explanation of the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities² ('the ECNI Guide') clearly states that 'good relations cannot be based on inequality' and confirms that 'the term due regard was intended to be, and is, stronger than regard'.³ It also clarifies that 'the discharge of the good relations duty cannot be an alternative to or cannot set aside the equality of opportunity duty'.⁴

As the Housing Associations' equality schemes will be used as a point of reference for their staff's application of s75 and any training provided, it is crucial that the equality scheme itself contains clear statements on the relationship and difference between the two s75 duties. Similarly, the ECNI Guide provides useful statements on positive action and multiple identities. We believe that the inclusion of these statements, or similar, would help staff to understand s75. For example, it is a common misunderstanding that

² Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, ECNI, April 2010, found at

<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

³ As above, at page 26.

⁴ As above, at page 27.

‘universal application’ implies a neutral impact on equality groups, when it can, of course, exacerbate inequalities.

The useful passages in the ECNI Guide are as follows: ‘The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities. There is no conflict between the Section 75 statutory duties and other affirmative action measures or positive action measures which a public authority may undertake under anti-discrimination laws.’⁵

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⁵ As above, at page 25. At the same page, the ECNI Guide also states: ‘Individuals do not neatly fit into one Section 75 category or another, individuals will invariably be members of a number of Section 75 categories. Thus Section 75 enables multiple identity issues to be considered as well as issues regarding particular categories of people.’